REMARKS

No amendments have been made. No new matter has been added.

I.   Claim rejections under 35 U.S.C. § 112

Claims 1 and 14 stand rejected under 35 U.S.C. § 112, second paragraph, "as it is unclear as which at least one portion in the 'c' section it is referring." Section "b" of claims 1 and 14 read "of the software program includes **at least one portion** that is dependent on the target processor . . . ." Thus, "the at least one portion" in section "c" of claims 1 and 14 is sufficiently identified under 35 U.S.C. § 112. Therefore, Applicants respectfully submit that claims 1 and 14 as amended satisfy the requirements of 35 U.S.C. § 112, second paragraph.

II.   Claim rejections under 35 U.S.C. § 103

Claims 1 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0005419 (Pieper) in view of U.S. Patent No. 5,812,854 (Steinmetz).

It is an established principle that prior art references are references only for what they clearly disclose or suggest; it is not proper use of a patent as a reference to modify its structure to one which prior art references do not suggest. In re Randol and Redford, 165 USPQ 568 (CCPA 1970).

Claims 1 and 14 each recites flagging at least one portion of a code to indicate that the at least one portion is dependent on a target processor. Neither Pieper nor Steinmetz disclose or suggest such limitation. Applicants agree with the Examiner that Pieper does not disclose or suggest flagging a portion of a code (i.e., to indicate that the portion is target processor

dependent). However, Applicants respectfully submit that Steinmetz fails to teach or suggest the

deficiency present in Pieper. Particularly, Steinmetz discloses:

> ". . . any pseudo-ops present in the user-defined machine-dependent code input 310 would also be converted to a form compatible with machine-dependent intermediate code. . . .to serve as **compiler directive mechanisms** during machine-dependent optimizations, which are performed later in the preferred embodiment." (column 9, lines 25-41).

Applicants respectfully assert that the compiler directive mechanisms are machine instruction

and not flags to indicate that "at least one portion to indicate that the at least one portion is

dependent on the target processor."

> Additionally, Steinmetz teaches:

> "During the machine-dependent optimizations of step 316, the compiler directive mechanism or **pseudo-ops contained in the code can be used to control the optimizations performed by the compiler**. For example, the user-defined machine code input 310 could contain a pseudo-op directing the compiler to leave a group of instructions in a predetermined order, i.e., the order they were written by the programmer. This result may be desired for hardware or functional reasons, even though a typical compiler would otherwise determine that from a data dependence point of view they could be legally rearranged. Thus, the pseudo-op flags group of instructions so the compiler will not reorder them even if the compiler believes such a reordering would be more efficient. . . . Thus, the preferred embodiment allows for the programmer to have more control over how the compiler optimizes the code, particularly how it optimizes the machine dependent user-defined code input 310. The next step 318 is to translate the integrated and optimized code into machine code form that can be read by the target computer system. Thus, the resulting machine code is well integrated and optimized. This results in code with fast and efficient performance." (column 9, line 64 to column 10, line 31).

As such, Steinmetz teaches using pseudo-op to flag group of instructions such that an operation

of a compiler can be controlled. However, there is nothing in Steinmetz that discloses or

suggests flagging a portion of a code *to indicate that the portion is dependent on a target*

processor, as recited in claims 1 and 14.

For at least the foregoing reason, claims 1 and 14, and their respective dependent claims,

are believed allowable over Pieper, Steinmetz, and their combination.

CONCLUSION

Based on the foregoing, all claims are believed allowable, and an allowance of the claims

is respectfully requested. If the Examiner has any questions or comments, the Examiner is

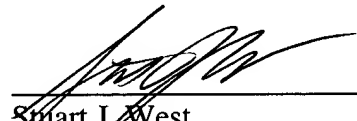respectfully requested to contact the undersigned at the number listed below.

If the Commissioner determines that additional fees are due or that an excess fee has been

paid, the Patent Office is authorized to debit or credit (respectively) Deposit Account No.

50-2518, billing reference no. **7017922001**.

Respectfully submitted,

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Dated: May 2, 2005   By: _____

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